

REMARKS/ARGUMENTS

The Examiner's response presented in the Advisory Action dated May 30, 2007 (hereinafter Advisory Action) has been considered. The Applicant respectfully submits that the amendments to the claims place them in condition for allowance. The following discussion is included to further establish the patentability of the claims, particularly in light of the Examiner's remarks contained within the Advisory Action and the Final Office Action of March 8, 2007 (hereinafter Office Action).

Claims 1, 15-17, 21-27, 37, 44, 50, and 57 are amended. Support for the amendments to independent claims 1, 21, 37, and 50 can be found in the Specification on page 20, line 7 – page 21, line 2; page 22, lines 1-7; and at Col. 6, Lines 17-19 of U.S. Patent No. 6,285,907, which is incorporated by reference by the Specification at Page 13; among other locations. The amendments to dependent claims 15-17, 22-27, 44, and 57 carry through the amendments to independent claims 1, 21, 37, and 50, respectively. Accordingly, no new matter has been added.

Claims 1-5, 8, 13-14, 19-25, 28-29, 33-41, 44, 47-54, 57, and 60-62 stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Publication No. 2002/0035376 by *Bardy et al.* (hereinafter "*Bardy* '376"). Claims 1-5, 8, 13-25, 28-41, 44, 47-54, 57, and 60-62 stand rejected under 35 U.S.C. §102(a) as being anticipated by U.S. Publication No. 2002/0091414 by *Bardy* (hereinafter "*Bardy* '414").

To anticipate a claim, the reference must teach every element of the claim. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Therefore, all claim elements, and their limitations, must be found in the prior art reference to maintain a rejection based on 35 U.S.C. §102.

The Applicant's independent claims 1 and 21 each recite, among other features, some variation of detection circuitry configured to receive cardiac signals using the one or more electrodes and detect a tachycardia condition, a bradycardia condition, and an asystole condition using the cardiac signals. The Applicant's independent claims 37 and 50 each recite, among other features, some variation of detecting one of a plurality of cardiac conditions, each cardiac condition necessitating treatment in response to the

sensed cardiac activity, the plurality of cardiac conditions comprising a tachycardia condition, a bradycardia condition, and an asystole condition.

An anticipatory reference of independent claims 1, 21, 37, and 50 must disclose detection of a tachycardia condition, a bradycardia condition, and an asystole condition, as well as a corresponding therapy for each condition. The Applicant respectfully submits that *Bardy* '376 and *Bardy* '414 each fails to teach detecting an asystole condition and delivering an asystole prevention therapy.

As such, neither *Bardy* '376 nor *Bardy* '414 teach each and every element and limitation of independent claims 1, 21, 37, and 50, and accordingly cannot anticipate these claims.

Dependent claims 2-5, 8, 13-20, 22-25, 28-36, 38-41, 44, 47-49, 51-54, 57, and 60-62, which are dependent from independent claims 1, 21, 37, and 50, respectively, were also rejected under 35 U.S.C. §102(a) and (b) as being unpatentable over *Bardy* '414 and *Bardy* '376, respectively. While the Applicant does not acquiesce with the particular rejections to these dependent claims, it is believed that these rejections are now moot in view of the remarks made in connection with independent claims 1, 21, 37, and 50. These dependent claims include all of the limitations of the base claim and any intervening claims, and recite additional features which further distinguish these claims from the cited reference. Therefore, dependent claims 2-5, 8, 13-20, 22-25, 28-36, 38-41, 44, 47-49, 51-54, 57, and 60-62 are also not anticipated by *Bardy* '414 nor *Bardy* '376.

For at least these reasons, the Applicant respectfully submits that the rejection of claims 1-5, 8, 13-25, 28-41, 44, 47-54, 57, and 60-62 as being anticipated by *Bardy* '414 or *Bardy* '376 is not sustainable.

Claims 6, 26, 42, and 55 stand rejected under 35 U.S.C. §103(a) as being unpatentable over *Bardy* '376 as applied to claims 1, 21, 37, and 50 and further in view of U.S. Patent No. 4,562,841 to *Brockway et al.* (hereinafter "*Brockway*"). Claims 6, 26, 42, and 55 stand rejected under 35 U.S.C. §103(a) as being unpatentable over *Bardy* '414 as applied to claims 1, 21, 37, and 50 and further in view of *Brockway*. Claims 7, 27, 43, and 56 stand rejected under 35 U.S.C. §103(a) as being unpatentable over *Bardy* '376 as applied to claims 1, 21, 37, and 50 and further in view of U.S. Patent No. 5,814,079 to *Kieval et al.* (hereinafter "*Kieval*"). Claims 7, 27, 43, and 56 stand rejected under 35

U.S.C. §103(a) as being unpatentable over *Bardy* ‘414 as applied to claims 1, 21, 37, and 50 and further in view of *Kieval*. Claims 17-18 and 31-32 stand rejected under 35 U.S.C. §103(a) as being obvious over *Bardy* ‘376 as applied to claims 1 and 21, and further in view of U.S. Publication No. 2004/0215258 by *Lovett et al.* (hereinafter “*Lovett*”).

Each of claims 6, 7, 17, 18, 26, 27, 31, 32, 42, 43, 55, and 56 depend from one of independent claims 1, 21, 37, and 50, respectively. Independent claims 1, 21, 37, and 50 are not obvious for at least the reason that the cited references fail to teach or suggest each and every limitation recited in each claim. Furthermore, while the Applicant does not acquiesce with the particular rejections to these dependent claims, it is believed that these rejections are now moot in view of the remarks made in connection with independent claims 1, 21, 37, and 50. These dependent claims include all of the limitations of the base claim and any intervening claims, and recite additional features which further distinguish these claims from the cited reference. Moreover, if an independent claim is nonobvious under 35 U.S.C. §103, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988). Therefore, dependent claims 6, 7, 17, 18, 26, 27, 31, 32, 42, 43, 55, and 56 are not made obvious by *Bardy* ‘414 nor *Bardy* ‘376, even in combination with *Brockway*, *Kieval*, and *Lovett*.

As such, the Applicant respectfully requests withdrawal of the §103(a) rejection of claims 6, 7, 17, 18, 26, 27, 31, 32, 42, 43, 55, and 56 and notification that these claims are in condition for allowance.

For at least these reasons, the Applicant respectfully submits that the rejection of claims 6, 7, 17, 18, 26, 27, 31, 32, 42, 43, 55, and 56 as being made obvious by *Bardy* ‘414 or *Bardy* ‘376, in combination with *Brockway*, *Kieval*, and *Lovett*, is not sustainable.

It is to be understood that the Applicant does not acquiesce to the Examiner’s characterization of the asserted art or the Applicant’s claimed subject matter, nor of the Examiner’s application of the asserted art or combinations thereof to the Applicant’s claimed subject matter. Moreover, the Applicant does not acquiesce to any explicit or implicit statements or conclusions by the Examiner concerning what would have been obvious to one of ordinary skill in the art. The Applicant respectfully submits that a detailed discussion of each of the Examiner’s rejections beyond that provided above is


not necessary, in view of the clear absence of teaching and suggestion of various features recited in the Applicant's pending. The Applicant, however, reserves the right to address in detail the Examiner's characterizations, conclusions, and rejections in future prosecution.

In view of the remarks presented above, the Applicant respectfully submits that the claims are patentable over the asserted references, timely notification of which is kindly solicited. Authorization is given to charge Deposit Account No. 50-3581 (GUID.611PA) any necessary fees for this filing. If the Examiner believes it necessary or helpful, the undersigned attorney invites the Examiner to contact him to discuss any issues related to this case.

Respectfully submitted,
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